UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6963

SAMMY JUNIOR MORGAN,

Petitioner - Appellant,

versus

THEODIS BECK, Secretary of North Carolina Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, District Judge. (CA-03-849)

Submitted: September 16, 2004 Decided: September 23, 2004

Before LUTTIG, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sammy Junior Morgan, Appellant Pro Se. Clarence Joe DelForge, III, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

PER CURIAM:

Sammy Junior Morgan seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C. § 2254 (2000). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied and advised Morgan that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Morgan failed to object to the magistrate judge's recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Morgan has waived appellate review by failing to file objections after receiving proper notice.* Accordingly, we deny Morgan's motion to proceed in forma

*In his informal brief Morgan seeks to raise, for the first time, a claim pursuant to the recent Supreme Court case of Blakely v. Washington, 124 S.Ct. 2531 (2004). Even if properly before this court for consideration, Blakely would offer Morgan no relief, because, inter alia, the Supreme Court has not made its ruling in Blakely retroactive to cases on collateral review. See In re Dean, 375 F.3d 1287, 1290 (11th Cir. 2004); see also United States v. Sanders, 247 F.3d 139, 151 (4th Cir. 2001) (holding that the rule announced in Apprendi v. New Jersey, 530 U.S. 466 (2000), the precursor to Blakely, is not retroactively applicable to cases on (continued...)

pauperis, deny a certificate of appealability, and dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

[*](...continued)
collateral review).